Sykt Perusahaan Seri Connolly Sdn Bhd v Pengarah Tanah dan Galian, Negeri Perak & Anor

HIGH COURT (IPOH) — ORIGINATING MOTION NO 21-76 OF 1997
KANG HWEE GEE J
10 APRIL 1998

Land Law *— Alienation and incidents — Refusal to issue land title — Whether every act, omission, refusal, direction or order made by the State Director, registrar or land administrator are appealable — Whether s 80(3) merely imposes a perfunctory duty to prepare, register and issue title after payment of requisite fees — Whether refusal or omission to issue document of title rightly or wrongly is appealable — National Land Code 1965 ss 80(3) & 418*

In 1974, the appellant company applied and was granted a piece of state land ('Lot 72656'). The appellant then paid the required premium for the land. Subsequently, the appellant made an application for qualified titles of 1,462 subdivided lots of land over Lot 72656. The Executive Council approved the application but revoked its earlier approval for the undivided Lot No 72656. The appellant was required to appoint an approved licensed surveyor to survey of the lots for the purpose of issuing the titles which it failed to do. Nine years later, by a letter dated 10 March 1989, the appellant wrote to the first respondent to request that its application for the individual lots be cancelled and instead be issued with only one title for Lot 72656 as originally approved by the State Executive Council. On 8 September 1994, the first respondent informed the appellant that the original approval for alienation of land Lot 72656 had earlier been revoked at the Executive Council's meeting. Solicitors for the appellant wrote to the first respondent to require him to issue a title to the appellant for Lot 72656 contending that the land had been approved for alienation in 1974. Thereafter, the first respondent returned the premium paid to the appellant. The appellant appealed.

Counsel for the appellant contended that since the appellant had paid all the requisite fees, the registrar is obliged under s 80(3) of the National Land Code 1965 ('the NLC') to issue the qualified title to the appellant. The registrar's decision not to do so is thus appealable under s 418 of the NLC. Counsel for the respondent, on other hand, submitted that the function of the registrar under s 80(3) of the NLC is merely perfunctory and that he could not do more under the circumstances given the fact that the state authority had on 2 April 1980 clearly revoked its approval of Lot 72656.

Held, dismissing the appeal:

(1) Not every act, omission, refusal, direction or order made by the State Director, the registrar or the land administrator are appealable under s 418 of the NLC. To be appealable, such decisions must relate to acts in which they are required to adjudicate and not merely to acts or functions which they are merely required to perform under the NLC.

Section 80(3) does not impose on the registrar a duty to make a decision whether or not he should issue the title but merely imposes a perfunctory duty to prepare, register and issue the title after the state authority has alienated the land and all the requisite fees have been paid. His refusal or omission to issue the document of title rightly or wrongly is therefore clearly not appealable. The appellant's redress, if any, is not an appeal under s 418 but an order of mandamus under the Specific Relief Act 1950 to compel a public servant to perform his duty (see pp 411C, H–I).

(2) But even assuming that the registrar's refusal or omission to issue the title is appealable, his decision is still necessarily limited to what he could do under the circumstances. Given that in the instant case the State Executive Council had earlier revoked its alienation of the original Lot 72656 when it approved the alienation of the 1,462 lots to the appellant, it is clearly not within the power of the registrar now to issue a qualified title for Lot 72656 (see p 412B–C).

[**Bahasa Malaysia summary**

Dalam tahun 1974, syarikat perayu telah memohon dan diberikan sebidang tanah kerajaan ('Lot 72656'). Perayu kemudian membayar premium yang diperlukan bagi tanah tersebut. Kemudiannya, perayu telah membuat satu permohonan untuk mendapatkan hakmilik sementara bagi 1,462 lot-lot tanah yang telah dipecah bahagi di atas Lot 72656. Majlis Mesyuarat telah meluluskan permohonan tersebut tetapi telah membatalkan kelulusannya yang awal untuk Lot No 72656 yang tidak berbahagi. Perayu telah dikehendaki untuk melantik jurukur berlesen yang telah diluluskan untuk mengukur lot-lot tersebut bagi tujuan mengeluarkan hakmilik yang mana telah gagal dilakukan. Sembilan tahun kemudiannya, melalui surat bertarikh 10 Mac 1989, perayu telah menulis kepada penentang pertama bagi meminta supaya permohonannya untuk lot-lot yang tidak berbahagi itu dibatalkan dan sebaliknya hanya mengeluarkan satu hakmlik bagi Lot 72656 sepertimana yang pada asalnya diluluskan oleh Majlis Mesyuarat Negeri. Pada 8 September 1994, penentang pertama telah memaklumkan kepada perayu bahawa kelulusan asal untuk pemberimilikan tanah Lot 72656 telah pada awalnya dibatalkan di mesyuarat Majlis Mesyuarat. Peguamcara bagi pihak perayu telah menulis kepada penentang pertama untuk memintanya mengeluarkan hakmilik kepada perayu bagi Lot 72656 yang mana adalah ditegaskan bahawa tanah tersebut telah diluluskan untuk pemberian milikan dalam tahun 1974. Selepas itu, penentang pertama telah mengembalikan premium tersebut yang telah dibayar kepada perayu. Perayu telah merayu.

Peguam bagi pihak perayu telah menegaskan bahawa oleh kerana perayu telah membayar kesemua bayaran yang diperlukan, pendaftar adalah berkewajipan di bawah s 80(3) Kanun Tanah Negara 1965

('KTN') untuk mengeluarkan hakmilik sementara kepada perayu. Keputusan pendaftar untuk tidak berbuat sedemikian boleh dirayu di bawah s 418 KTN. Peguam bagi pihak penentang, sebaliknya, berhujah bahawa fungsi pendaftar di bawah s 80(3) KTN adalah sambil lewa sahaja dan bahawa beliau tidak dapat melakukan lebih daripada itu dalam keadaan itu memandangkan fakta bahawa pihak berkuasa negeri telah pada 2 Ogos 1980 dengan jelasnya membatalkan kelulusannya terhadap Lot 72656 tersebut.

Diputuskan, menolak rayuan:

(1) Bukannya setiap tindakan, peninggalan, keengganan, arahan atau perintah yang dibuat oleh Pengarah Negeri, Pendaftar atau Pentadbir Tanah boleh dirayu di bawah s 418 KTN. Untuk menjadikan ianya boleh dirayu, keputusan-keputusan yang sedemikian mesti mempunyai kaitan dengan tindakan-tindakan dalam mana mereka dikehendaki menghakimi dan bukan semata-mata kepada perbuatan-perbuatan atau fungsi-fungsi di mana mereka hanya dikehendaki untuk bertindak di bawah KTN.

Seksyen 80(3) tidak mempertanggungjawabkan ke atas pendaftar satu kewajipan untuk membuat keputusan sama ada beliau seharusnya mengeluarkan hakmilik tersebut atau pun tidak, tetapi hanya meletakkan suatu kewajipan yang bersifat sambil lewa bagi menyediakan, mendaftar dan mengeluarkan hakmilik tersebut selepas pihak berkuasa negeri memberi milikan tanah tersebut dan kesemua fee yang dipersyaratkan telah dibayar. Keengganan atau kelalaiannya untuk mengeluarkan dokumen hakmilik adalah dengan betulnya atau salahnya jelas tidak boleh dirayu. Penebusan rugi oleh perayu, jika ada, bukannya merupakan rayuan tetapi adalah satu perintah mandamus di bawah Akta Relif Spesifik 1950 untuk memaksa seorang pegawai kerajaan untuk melaksanakan kewajipannya (lihat ms 411C, H–I).

(2) Tetapi sungguhpun menganggap bahawa keengganan atau kelalaian pendaftar untuk mengeluarkan satu hakmilik boleh dirayu, keputusan beliau adalah masih secara pentingnya terhad kepada apa yang boleh dilakukan oleh beliau di bawah keadaan tersebut. Memandangkan keadaan sedemikian dalam kes sekarang ini, Majlis Mesyuarat Negeri telah pada awalnya membatalkan pemberian milikannya terhadap Lot 72656 yang asal apabila ianya meluluskan pemberian milikan 1,463 lot-lot tersebut kepada perayu, ianya kini jelas tidak berada dalam kuasa pendaftar untuk mengeluarkan satu hakmilik sementara bagi Lot 72656 (lihat ms 412B–C).]

Notes

For cases on alienation and incidents, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1377–1398.

Cases referred to

Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors [1984] 2 MLJ 123 (refd)

Pow Hing & Anor v Registrar of Titles, Malacca [1981] 1 MLJ 155 (refd)

Legislation referred to

National Land Code 1965 ss 76, 81(1), (2), (3), 263, 326(2), 390, 418, Chap II

Specific Relief Act 1950

David Chai (*Chai & Partners*) for the appellant.

Abdul Wahab bin Said Ahmad (State Legal Adviser) and *Shahidani bin Abdul Aziz* (Senior Federal Counsel) for the respondents.

Kang Hwee Gee J: This is an appeal by the appellant Sykt Perusahaan Seri Connolly Sdn Bhd by way of an originating motion against the refusal of the Pengarah Tanah dan Galian, Perak to issue a qualified title to the appellant. The appeal is made purportedly under s 418 of the National Land Code 1965 which reads as follows:

> Appeals to the Court
>
> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the Court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the Court shall make such order thereon as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

The alleged omission or refusal was in respect of the appellant's application for a piece of land known as Lot 72656 from the State Authority.

To appreciate the appellant's grievance which led to this appeal, it is necessary to set out the background to this motion in some details.

On 6 February 1974, the appellant company applied for State land. The application was accompanied with a delineated plan of the area applied for comprising of some 153,324 acres. The application was registered as Bil 11/74, in the file of the Pejabat Tanah, Daerah Kinta, Ipoh.

The application was approved by the State Executive Council on 27 November 1974 in accordance with s 81(2) of the National Land Code 1965. The land was designated as Lot 72656.

Accordingly, a Borang 5A notice was issued on the same date by the collector requiring the appellant to make the necessary payments of premium and other fees as required under s 81(1) amounting to the sum of RM1,279,494. The appellant was required to settle this sum within three months.

The appellant settled the requisite sum of RM1,279,494 on 6 June 1975 after having obtained extention of time to make the payment.

On 21 April 1977, the State Executive Council amended the approval of the land by re-delineating the area approved earlier.

On 21 December 1979, the appellant made another application for qualified titles of 1,462 subdivided lots of land over the same area that had been approved by the Executive Council earlier. The application was accompanied by a plan of the subdivided lots for the purpose of a housing scheme.

On 2 April 1980, the Executive Council approved the appellant's application for the qualified titles to the 1,462 lots but revoked its earlier approval for the undivided Lot No 72656. The minutes of the Executive Council's meeting read as follows:

> *Per Bil 46 (1467)*
>
> Permohonan untuk memulakan Skim Perumahan dan Bangunan Perniagaan atas Lot 72656 seluas 150 ekar Mukim Ulu Kinta.
>
> Majlis menimbangkan Kertas Bil 334/80 dan memutuskan seperti berikut:
>
> Majlis:
>
> I membatalkan keputusan MMK Bil 865/29 Disember 1976 mengenai KM Bil 1070/76 yang meluluskan Lot 72656 Mukim Ulu Kinta kepada Syarikat Perusahaan Seri Connolly Sdn Bhd; dan
>
> II meluluskan pemberian milik kawasan seperti ditunjuk bergarisan tepi warna merah pada surihan (13) kepada Syarikat Perusahaan Seri Connolly Sdn Bhd untuk bangunan (rumah kedai) dengan dikeluarkan suratmilik berasingan mengikut pelan tataatur di Bil (11) dengan perjanjian dan syarat-syarat yang diperakukan oleh PTG Pk seperti tersebut di perenggan 6(II) kepada Kertas itu.
>
> (PTG Pk 402/5-278)

On 8 May 1980, the approval was communicated to the appellant by the Pengarah Tanah dan Galian by letter wherein the appellant was informed that it was required to appoint an approved licensed surveyor to do the required survey of the lots for the purpose of issuing the titles.

Some nine years later, by a letter dated 10 March 1989, the appellant responded to the Pengarah Tanah dan Galian's letter of 8 May 1980 wherein it admitted that it could not proceed with the Pengarah Tanah dan Galian's request for survey work to be done. The appellant requested that its application for the individual lots be cancelled and instead be issued with only one title for Lot 72656 as originally approved by the State Executive Council on 21 November 1974. The letter reads as follows:

> Syarikat Perusahaan Seri Connolly Sdn Bhd
> D/A Company Secretary
> Peremba Management Sdn Bhd
> Tingkat 10, Bangunan Peremba
> 424, Jalan Tun Razak
> 50400 Kuala Lumpur

(1) dlm SPSC/1/89 10 Mac 1989

Pengarah
Tanah dan Galian Perak
Pejabat Tanah dan Galian
30576 Ipoh, PERAK.

Tuan,

Permohonan untuk mengeluarkan hakmilik Lot 72656, Jalan Pasir Putih, Mukim Ulu Kinta, Ipoh, Perak kepada Syarikat Perusahaan Seri Connolly Sdn Bhd

Surat kelulusan kurniaan tanah rujukan PTK (1) 2/22/73 bertarikh 21 November 1974 dan surat kelulusan hakmilik berasingan rujukan (18) dlm PTG Pk 402/5-278 bertarikh 8 Mei 1980 adalah dirujuk.

Sebagai makluman pihak tuan, sungguhpun permohonan untuk mendapatkan hakmilik berasingan bagi cadangan skim perumahan dan bangunan perniagaan telah diluluskan oleh pihak pejabat tuan sejak 8 Mei 1980, pihak syarikat tidak dapat meneruskan kerja-kerja ukur tanah atas sebab yang tidak dapat dielakkan.

Buat masa ini, pihak syarikat sedang membuat satu kajian yang terperinci dengan tujuan untuk melaksanakan projek ini dengan seberapa segera yang boleh.

Memandangkan keadaan pasaran hartanah telah banyak berubah, cadangan pembangunan asal sebagaimana yang telah pejabat tuan luluskan terpaksa diubah bagi menyesuaikan dengan keadaan semasa.

Sementara menunggu kajian terperinci tersebut siap, syarikat dengan ini memohon supaya permohonan syarikat untuk mendapatkan hakmilik berasingan mengikut pelan pinta ukur pam 55/80 dibatalkan dan sebaliknya syarikat diberi satu hakmilik sahaja mengikut kelulusan asal Kerajaan Negeri pada 21 November 1974 lalu.

Kerjasama dan pertihbangan segera pihak tuan di dalam perkara ini adalah sangat dihargai dan diharapkan.

Sekian, terima kasih.

Yang benar,

tt
(ABDUL MAJID BIN HAJI JAAFAR)
Pengarah
Syarikat Perusahaan Seri Connolly Sdn Bhd

On 8 September 1994, the Pengarah Tanah dan Galian informed the appellant that the original approval for alienation of land Lot 72656 had been revoked at the Executive Council's meeting on 13 July 1994 in accordance with the decision which was made by the council on 2 July 1980. The appellant was also informed that the council had agreed that the payment made by the appellant for the land would be returned to the appellant.

On 15 July 1997, acting on the instruction of the appellant, its solicitors Messrs Chai & Partners wrote to the Pengarah Tanah dan Galian to require him to issue a title to the appellant for Lot 72656 contending that the land had been approved for alienation in 1974.

On 25 July 1997, the Pengarah Tanah dan Galian returned the sum of RM1,276,982 to the appellant by a cheque drawn on Bank Bumiputra. A

Nature of the appeal

It could be readily appreciated that the appellant's grievance was the refusal of the Pengarah Tanah dan Galian to accede to its request (vide the letter dated 15 July 1997) to issue a qualified title of the land to the appellant despite the fact that the State Authority had approved the alienation of Lot 72656. Counsel for the appellant contends that the failure of the Pengarah Tanah dan Galian (who by virtue of s 12(3)(c) has the power of the registrar) to reply to this letter constitutes the registrar's implied refusal or omission to issue the qualified title, which he is by law required to do under s 80(3) of the National Land Code 1965 which reads as follows: B C

> Subject to subsection (2) of section 81, upon the approval of the alienation of any land by the State Authority under this Act and upon payment of all fees the Registrar shall prepare, register and issue a qualified title in respect of the land. D

Submissions

The parties have submitted at length before me. For the sake of brevity, however, I do not propose to deal with all the points raised in the submissions. I shall only allude to those which I consider directly relevant to this appeal. E

In essence, appellant's counsel's argument is that since the appellant had paid all the requisite fees including the premium as requested for in the letter of approval for Lot 72656 (exh MM–1 above), the registrar is obliged under s 80(3) to issue the qualified title to the appellant. By ignoring its request to issue the title and returning the premium which the appellant had paid, the registrar had in fact impliedly decided not to issue a qualified title to Lot 72656, which made its decision appealable under s 418 of the National Land Code 1965. The word 'shall' in the National Land Code, counsel submits, has been interpreted by the Federal Court in *Pow Hing & Anor v Registrar of Titles, Malacca* [1981] 1 MLJ 155 as 'mandatory'. F G

The counter argument put forth by the learned legal advisor for the respondent basically is that the function of the registrar under s 80(3) of the National Land Code 1965 is merely perfunctory and that he could not do more under the circumstances given the fact that the state authority had on 2 April 1980 clearly revoked its approval of Lot 72656. This is explicit in the confidential minutes of the Executive Council of 2 April 1980 which has been declassified for the purpose of this hearing. The state authority he contends, was at liberty to revoke its approval of alienation of Lot 72656 at any time before the land is entered into the register document of title by the registrar pursuant to s 78 of the National Land Code 1965 (*Government of the State of Negeri Sembilan & Anor v Yap Chong Lan & Ors* [1984] 2 MLJ 123). H I

A Before I proceed to consider the relative merit of their submissions however, I shall first consider a fundamental question which appears to have been overlooked by the parties but which if answered in the negative would allow me to dispose of this appeal forthwith.

B *Scope of s 418 — Is the registrar's decision appealable?*

By providing in sub-s (3) for 'decision' to include 'any act or omission, refusal, direction or order', it is clear that the legislature has intended that decisions of the State Director, the registrar or the land administrator are to be given a wide meaning. However, in my view, not every act, omission, C refusal, direction or order made by them are appealable. To be appealable such decisions must relate to acts in which they are required to adjudicate and not merely to acts or functions which they are merely required to perform under the National Land Code 1965.

This is so because an appeal in the legal sense always co-relates to a D power to decide and not merely to a duty to act.

For instance, a decision of the land administrator to create a private right of way over an alienated land after conducting due enquiry under s 390 of the National Land Code is an act that relates to his power to grant the right and is therefore appealable under s 418 of the National Land Code. An order for sale of a charged land made by the land administrator E after due enquiry under s 263 of the National Land Code is also for the same reason appealable. On the other hand, a refusal of the registrar of Titles to extend the duration of a caveat under s 326 of the National Land Code 1965 in voliation of the order of the High Court to do so, is not appealable because such a refusal on his part does not emanate from his F power to extend but merely from his duty to obey the order of the court under s 326(2).

To make all perfunctory decisions of these land officers appealable would have the undesirable effect of relegating to the High Court the executive responsibility of land management in the State of Perak in direct G voliation of Chap II of the National Land Code wherein this function is clearly vested in the state authority. The High Court's control over these officers in so far as it relates to purely perfunctory matters is necessarily limited and is described in s 417, that is to say, 'to direct the Registrar or any Land Administrator to do all the things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land'.

H Section 80(3), it is clear, does not impose on the registrar a duty to make a decision whether or not he should issue the title but (as the learned legal advisor has correctly submitted) merely a perfunctory duty to prepare, register and issue the title after the state authority has alienated the land and all the requisite fees have been paid. His refusal or omission to issue I the document of title rightly or wrongly is therefore clearly not appealable. The appellant's redress, if any, is not an appeal under s 418 but an order of mandamus under the Specific Relief Act 1950 to compel a public servant to perform his duty.

On this ground alone the appellant's appeal would have to fail.

If refusal or omission is appealable

But even assuming that the registrar's refusal or omission to issue the title is appealable, his decision is still necessarily limited to what he could do under the circumstances. One must bear in mind that land may only be alienated by the state authority acting under s 76 of the National Land Code 1965. It is only upon approval of alienation that the registrar can act under s 80(3) of the National Land Code 1965 to issue a qualified title to the successful applicant and he can only act in accordance with the decision of the State Executive Council. Given that in the instant case the State Executive Council had on 21 December 1979 revoked its alienation of the original Lot 72656 when it approved the alienation of the 1,462 lots to the appellant, it is clearly not within the power of the registrar now to issue a qualified title for Lot 72656.

His refusal or omission to issue the title was under the circumstances correct and justified.

The appellant's appeal is without merit and is dismissed with costs.

Appeal dismissed with costs.

Reported by Loo Lai Mee